

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

**UNITED STATES OF AMERICA,**

**v.**

**Criminal Action No. 3:02-cr-00231  
Honorable Robert C. Chambers**

**JOHN DAVID MOONEY,**

**Defendant.**

**DEFENDANT'S MOTION TO WITHDRAW PLEA OF GUILTY**

COMES NOW the Defendant, by counsel, Nicholas S. Preservati and Joseph L. Jenkins, of Preservati Law Offices, PLLC, and hereby moves to withdraw his plea of guilty and in support thereof states as follows:

1. That on February 26, 2003, with the advice of counsel, Defendant pled guilty to the single count contained in the indictment, a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

2. That on May 12, 2003, Defendant's motion to withdraw his plea of guilty was denied and Defendant was sentenced to 180 months imprisonment.

3. That Defendant's direct appeal alleging this Court erred by denying his motion to withdraw his plea of guilty was denied by the United States Court of Appeals for the Fourth Circuit. *See U.S. v. Mooney*, 90 Fed. Appx. 59 (4<sup>th</sup> Cir. 2004) (per curiam).

4. That on September 16, 2004, Defendant filed a motion pursuant to 28 U.S.C. § 2255 with this Court seeking to vacate his conviction and sentence on the basis of ineffective assistance of counsel.

5. That on August 23, 2006, this Court denied Defendant's § 2255 motion.

6. That on September 1, 2006, Defendant filed a notice of appeal seeking review of this Court's August 23, 2006 Order denying Defendant's § 2255 motion.

7. That on August 6, 2007, by published opinion, the United States Court of Appeals for the Fourth Circuit granted Defendant's appeal, allowing Defendant to withdraw his plea of guilty. *U.S. v. Mooney*, No. 06-7565 (4<sup>th</sup> Cir. August 6, 2007) (Case No. 3:02-cr-00231, Document 86, August 8, 2007).

8. That the judgment entered by the United States Court of Appeals for the Fourth Circuit and filed with this Court on August 8, 2007, states as follows:

In accordance with the written opinion of this Court filed this day, the Court reverses the district court's order denying Mooney's motion under 28 U.S.C. Section 2255, vacates the original judgment of conviction and sentence entered in this case, and remands this case to the district court with directions to permit Mooney to withdraw his guilty plea. (Case No. 3:02-cr-00231, Document 87, August 8, 2007)

9. That pursuant to the Judgment of the United States Court of Appeals for the Fourth Circuit, Defendant hereby moves to withdraw his plea of guilty.

Respectfully submitted,

**John David Mooney,**  
By counsel,

s/Nicholas S. Preservati  
Nicholas S. Preservati (W.Va. Bar #8050)  
Joseph L. Jenkins (W.Va. Bar #9680)  
**Preservati Law Offices, PLLC**  
Post Office Box 1431  
Charleston, West Virginia 25325  
304.346.1421  
304.346.1744 *facsimile*  
*Counsel for Defendant*

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

**UNITED STATES OF AMERICA,**

**v.**

**Criminal Action No. 3:02-cr-00231  
Honorable Robert C. Chambers**

**JOHN DAVID MOONEY,**

**Defendant.**

**CERTIFICATE OF SERVICE**

I certify that on the 21<sup>st</sup> day of September, 2007, I filed the foregoing **Defendant's Motion to Withdraw Plea of Guilty** with the Court using CM/ECF which will send notification of such filing to the following CM/ECF participants:

Miller A. Bushong, III, Esquire  
U. S. ATTORNEY'S OFFICE  
110 Heber Street, Room 261  
Beckley, West Virginia 25801  
304/253-6722  
Fax: 304/253-9206  
miller.bushong@usdoj.gov

s/Nicholas S. Preservati  
Nicholas S. Preservati (W.Va. Bar #8050)  
Joseph L. Jenkins (W.Va. Bar #9680)  
**Preservati Law Offices, PLLC**  
Post Office Box 1431  
Charleston, West Virginia 25325  
304.346.1421  
304.346.1744 *facsimile*  
*Counsel for Defendant*